

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

RUSSELL CHARLES BUSKIRK,

Plaintiff,

v.

CIVIL ACTION NO. 6:11-cv-00685

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff's Complaint [Docket 2]. By Standing Order entered September 2, 2010, and filed in this case on September 30, 2011, this action was referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Stanley filed her PF&R (Docket 12) on October 24, 2012, recommending that this Court affirm the final decision of the Commissioner and dismiss this matter from the Court's docket. On November 8, 2012, Plaintiff filed objections to the PF&R, which included as an exhibit (Docket 13-2) a letter dated November 6, 2009, from Plaintiff's counsel to the administrative law judge presiding over Plaintiff's social security case. Because this letter had not previously been made part of the record in this case, Magistrate Judge Stanley did not have the opportunity to review this document prior to issuing her PF&R. For this reason, the Court returned this case to Magistrate Judge Stanley so that she could fairly

determine what, if any, impact this document might have on her PF&R. Thereafter, on November 26, 2012, Defendant filed a response to Plaintiff's objections essentially contending that Plaintiff's proffer of the November 6, 2009, letter was untimely submitted. (Docket 15.) On November 27, 2012, Magistrate Judge Stanley issued an order withdrawing her October 24, 2012 PF&R. (Docket 16) and, on November 28, 2012, filed a second PF&R (Docket 17) recommending that the Court reverse the final decision of the Commissioner, remand for further proceedings, and dismiss this case from the Court's docket. (*Id.*)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the November 28, 2012 PF&R in this case were due on December 17, 2012. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R (Docket 17), **REVERSES** the final decision of the Commissioner, **REMANDS** this case to the Commissioner for further proceedings, and **DISMISSES** the Complaint [Docket 2], and **DIRECTS** the Clerk to remove this case from the

docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 8, 2013

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE